

assets from the FDIC under the restrictions set forth in this section.

(f) *Purchaser eligibility certificate required.* (1) Before any person may purchase any asset from the FDIC that person must certify, under penalty of perjury, that none of the restrictions contained in this section applies to the purchase. The person must also certify that neither the identity nor form of the person, nor any aspect of the contemplated transaction, has been created or altered with the intent, in whole or in part, to allow an individual or entity who otherwise would be ineligible to purchase assets from the FDIC to benefit directly or indirectly from the proposed transaction. The FDIC may establish the form of the certification and may change the form from time to time.

(2) Notwithstanding paragraph (f)(1) of this section, and unless the Director of the FDIC's Division of Resolutions and Receiverships, or designee, in his or her discretion so requires, a certification need not be provided by:

- (i) A state or political subdivision of a state;
- (ii) A federal agency or instrumentality such as the Government National Mortgage Association;
- (iii) A federally-regulated, government-sponsored enterprise such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or
- (iv) A bridge financial company.

[79 FR 20766, Apr. 14, 2014]

**§§ 380.14–380.19 [Reserved]**

**Subpart B—Priorities**

SOURCE: 76 FR 41642, July 15, 2011, unless otherwise noted.

**§ 380.20 [Reserved]**

**§ 380.21 Priorities.**

(a) The unsecured amount of allowed claims shall be paid in the following order of priority:

(1) Repayment of debt incurred by or credit obtained by the Corporation as receiver for a covered financial company, provided that the receiver has determined that it is otherwise unable to obtain unsecured credit for the cov-

ered financial company from commercial sources.

(2) Administrative expenses of the receiver, as defined in § 380.22, other than those described in paragraph (a)(1) of this section.

(3) Any amounts owed to the United States, as defined in § 380.23 (which is not an obligation described in paragraphs (a)(1) or (2) of this section).

(4) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in paragraph (a)(9) of this section), but only to the extent of \$11,725 for each individual (as adjusted for inflation in accordance with paragraph (b) of this section) earned within 180 days before the date of appointment of the receiver.

(5) Contributions owed to employee benefit plans arising from services rendered within 180 days before the date of appointment of the receiver, to the extent of the number of employees covered by each such plan multiplied by \$11,725 (as adjusted for inflation in accordance with paragraph (b) of this section); less the sum of (i) the aggregate amount paid to such employees under paragraph (a)(4) of this section, plus (ii) the aggregate amount paid by the Corporation as receiver on behalf of such employees to any other employee benefit plan.

(6) Any amounts due to creditors who have an allowed claim for loss of setoff rights as described in § 380.24.

(7) Any other general or senior liability of the covered financial company (which is not a liability described under paragraphs (a)(8), (9) or (11) of this section).

(8) Any obligation subordinated to general creditors (which is not an obligation described under paragraphs (a)(9) or (11) of this section).

(9) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, that is owed to senior executives and directors of the covered financial company.

(10) Post-insolvency interest in accordance with § 380.25, provided that interest shall be paid on allowed claims in the order of priority of the claims set forth in paragraphs (a)(1) through (9) of this section.

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## § 380.23

(11) Any amount remaining shall be distributed to shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company, in proportion to their relative equity interests.

(b) All payments under paragraphs (a)(4) and (a)(5) of this section shall be adjusted for inflation in the same manner that claims under 11 U.S.C. 507(a)(1)(4) are adjusted for inflation by the Judicial Conference of the United States pursuant to 11 U.S.C. 104.

(c) All unsecured claims of any category or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full or provision made for such payment before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a particular category or priority of claims in full, then distributions to creditors in such category or priority shall be made *pro rata*. A subordination agreement is enforceable with respect to the priority of payment of allowed claims within any creditor class or among creditor classes to the extent that such agreement is enforceable under applicable non-insolvency law.

### § 380.22 Administrative expenses of the receiver.

(a) The term “administrative expenses of the receiver” includes those actual and necessary pre- and post-failure costs and expenses incurred by the Corporation in connection with its role as receiver in liquidating the covered financial company; together with any obligations that the receiver for the covered financial company determines to be necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company. Administrative expenses of the Corporation as receiver for a covered financial company include:

(1) Contractual rent pursuant to an existing lease or rental agreement accruing from the date of the appointment of the Corporation as receiver until the later of

(i) The date a notice of the disaffirmance or repudiation of such lease or rental agreement is mailed, or

(ii) The date such disaffirmance or repudiation becomes effective; provided that the lesser of such lease is not in default or breach of the terms of the lease.

(2) Amounts owed pursuant to the terms of a contract for services performed and accepted by the receiver after the date of appointment of the receiver up to the date the receiver repudiates, terminates, cancels or otherwise discontinues such contract or notifies the counterparty that it no longer accepts performance of such services;

(3) Amounts owed under the terms of a contract or agreement executed in writing and entered into by the Corporation as receiver for the covered financial company after the date of appointment, or any contract or agreement entered into by the covered financial company before the date of appointment of the receiver that has been expressly approved in writing by the receiver after the date of appointment; and

(4) Expenses of the Inspector General of the Corporation incurred in carrying out its responsibilities under 12 U.S.C. 5391(d).

(b) Obligations to repay any extension of credit obtained by the Corporation as receiver through enforcement of any contract to extend credit to the covered financial company that was in existence prior to appointment of the receiver pursuant to 12 U.S.C. 5390(c)(13)(D) shall be treated as administrative expenses of the receiver. Other unsecured credit extended to the receivership shall be treated as administrative expenses except with respect to debt incurred by, or credit obtained by, the Corporation as receiver for a covered financial company as described in § 380.21(a)(1).

### § 380.23 Amounts owed to the United States.

(a) The term “amounts owed to the United States” as used in § 380.21(a)(3) includes all unsecured amounts owed to the United States, other than expenses included in the definition of administrative expenses of the receiver